

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

004770.00521

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on _____

Signature _____

Typed or printed name _____

Application Number

10/059,182

Filed

January 31, 2002

First Named Inventor

Janne Suuronen

Art Unit

2439

Examiner

Yin Chen Shaw

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Mark E. Wilinski/

Signature

☐ assignee of record of the entire interest.

Mark E. Wilinski

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Typed or printed name

☒ attorney or agent of record.

Registration number 63,230

202-824-3000

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

July 21, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below.

☒ *Total of 3 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Janne Suuronen *et al.*

Serial No.: 10/059,182

Filed: January 31, 2002

For: System and Method of Providing Virus
Protection At A Gateway

Atty. Docket No.: 004770.00521

Group Art Unit: 2439

Examiner: Yin Chen Shaw

Confirmation No.: 5357

PRE-APPEAL BRIEF REQUEST FOR REVIEW

U.S. Patent and Trademark Office, Mail Stop *AF*
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Randolph Building
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Alexandria, VA 22314

Sir:

Applicants respectfully request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reasons stated in the below remarks. If any fees are required or if an overpayment is made, the Commissioner is authorized to debit or credit Deposit Account No. 19-0733, accordingly. Any necessary extensions of time are hereby requested.

Remarks

Having received and reviewed the Final Office Action dated May 11, 2010, Applicants respectfully submit that the standing rejections are based on one or more clear legal and factual errors, and that the appeal process can be avoided through a pre-appeal brief review as set forth in the Official Gazette notice of July 12, 2005.

Rejections Under 35 U.S.C. § 103

Claims 1, 4, 5, 11, 32-34, 40-50, 53, 56-63, and 65 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink *et al.* (U.S. Patent No. 6,496,935, “Fink”) in view of Joyce (U.S. Patent No. 6,519,703, “Joyce”) and Baum *et al.* (U.S. Patent No. 6,400,707, “Baum”). Claims 6 and 54 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fink, Joyce and Baum and further in view of Lyle (U.S. Patent No. 6,886,102, “Lyle”). These rejections are traversed below.

Independent claim 1 recites, among other features, “a firewall configured to . . . classify the received data packets based on the contents of the data packets into packets of a first type which cannot contain a virus and packets of a second type which can contain a virus, *wherein classifying the received data packets includes determining whether at least one of the data packets includes content for a real-time audio or video data stream.*”

The Office Action at pages 7-8 concedes that Fink and Joyce fail to teach or suggest that classifying received data packets includes determining whether at least one of the data packets includes content for a real-time audio or video data stream as recited in claim 1. The Office Action at page 8, however, contends that Baum at col. 2, lines 41-59; col. 5, lines 61-62; col. 6, lines 25-57; and col. 7, lines 20-22 describes such features. In particular, the Office Action at pages 2-3 (“Response to Arguments”) asserts that Baum provides for classification by distinguishing whether a packet is data or voice, specifically citing Baum at col. 7, lines 20-22.

As discussed at pages 8-9 of the Amendment and Response filed January 26, 2010, Baum fails to teach or suggest the above-noted features. Specifically, Baum’s description of a rule based packet filter (col. 5, lines 61-62) fails to teach or suggest that the filter determines whether a packet includes audio or video in classifying that packet. Baum’s system relates to the generation of filter parameters based on set-up signaling dialog and does not teach or suggest the consideration of whether a packet includes audio or video in classifying the packet. Moreover, the mere description of the existence of audio or video packets (col. 2, lines 41-59) does not constitute a process of classifying data packets that includes determining whether the data packets include audio or video, as recited in claim 1. Thus, notwithstanding whether the cited documents are properly combinable, the asserted combination would not have resulted in the features as recited in claim 1.

Claims 49, 50, and 62 recite features similar to those discussed above with respect to claim 1 and are distinguishable from the applied documents for at least the same reasons as claim 1.

Claims 4, 5, 11, 32-34, 40-48, 53, 56-60, 61, 63 and 65 are dependent claims and are distinguishable from the applied documents for at least the same reasons as their respective base claims and further in view of the unique combinations of features recited therein. For example, claim 40 recites “a virus scanning engine configured to alert the destination upon detection of a virus in the data packets.” When claim 40 is read in connection with claim 1 from which it depends, the destination that is alerted upon the detection of a virus in the data packets is the same destination that is forwarded the data packets of the first type. The Office Action at page 13 contends that Joyce at col. 4, lines 61-67 describes the above-noted features recited in claim 40. Joyce at col. 4, lines 61-67 is reproduced below:

In the event that either of heuristic stages **46** or **48** discover problems in session data or session data flow, control is switched to an external call or alternate process **49**. Examples of external call or alternate process **49** are alarms; alerting devices; pager systems providing a message to an administrator, a security officer, or the FBI; or a log file. In one embodiment, a choice is made of any or all of these

Thus, even assuming (without admitting) that network 30 of Joyce can be properly analogized to the destination recited in claims 1 and 40 (as contended at page 6 of the Office Action in rejecting claim 1), Joyce fails to describe alerting network 30 upon detection of a virus in data packets. Indeed, Joyce at col. 4, lines 61-67 describes switching control to external call or alternate process 49 when a problem is discovered in session data or session data flow. Claim 40 is allowable for at least these additional reasons.

Claims 6 and 54 depend from claims 1 and 50, respectively, and are distinguishable from the applied documents for at least the reasons discussed above with respect to claims 1 and 50, as Lyle fails to remedy the deficiencies of Fink, Joyce and Baum (notwithstanding whether the alleged combination of documents would have been proper).

CONCLUSION

Applicants submit that the application is allowable for at least the reasons set forth above. Applicants reserve the right to include additional arguments in an appeal brief.

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same.

Respectfully submitted,
BANNER & WITCOFF, LTD.

Dated: July 21, 2010

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